

COUNTY OF YORK

MEMORANDUM

DATE: September 21, 2004 (BOS Mtg. 10/5/04)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Refund of Taxes Erroneously Assessed—Williamsburg Plantation, Inc.

This matter first came before you at your regular meeting of April 20, 2004, at which time the matter was tabled until such time as the Commissioner of the Revenue could respond to certain questions posed by members of the Board. Attached please find a memorandum of September 17, 2004, from Ann H. Thomas, Commissioner of the Revenue, to members of the Board of Supervisors, addressing some of the questions which were raised previously.

To summarize, Williamsburg Plantation, Inc. has constructed a timeshare resort in James City County, but operates two telemarketing offices in York County from which telemarketers seek to convince potential customers to tour the timeshare facilities. As far as the Commissioner of the Revenue has been able to determine, all contracts for the purchase of timeshare units are actually signed in James City County. It appears that the only financial transaction that takes place in York County is the posting of a refundable "good faith deposit" on a charge card over the telephone, which guarantees a potential buyer's appearance in James City County at a tour of the facility. If the potential buyer takes the tour, the good faith deposit is refunded, meaning that only those deposits which are retained by defaulting potential purchasers represent income realized by the York County telemarketing office.

In addition to the extensive conversations the Commissioner of the Revenue documents in her memorandum with officials of Williamsburg Plantation, Inc. and the Virginia Attorney General's Office, the County Attorney has likewise spoken with an attorney in the Taxation Division of the Attorney General's Office who concurs with the Commissioner's assessment that Williamsburg Plantation, Inc. is properly classified as a "contractor" for Business Professional and Occupational License (BPOL) taxation, and that there is insufficient business activity being conducted in York County to be able to classify the telemarketing office as a separate place of business taxable in York. Code of Virginia § 58.1-3715 indicates that a contractor is not liable for a BPOL tax in a jurisdiction other than the one in which the contractor maintains its principal place of business unless the contractor realizes at least \$25,000 in gross proceeds in another locality. In that event, the contractor must obtain a second business license and pay the BPOL tax in the other locality. However, that does not appear to be the case with respect to Williamsburg Plantation, Inc. and its business activities in York County. Moreover,

the Attorney General's Office has advised the Commissioner and the County Attorney that income realized by a contractor from real estate sales, when such sales are conducted by the contractor's own staff, are taxable to the jurisdiction where the real estate is located, regardless of the fact that contracts for the sale of the real estate may have been signed in other jurisdictions. Although that interpretation appears not to arise from an express provision in the Virginia Code or in the Department of Taxation's BPOL Guidelines, County staff have been assured by the Attorney General's Office that such interpretation has been consistent over time and across the state. Also significant is the fact that the BPOL Guidelines issued by the Virginia Department of Taxation state that a "contractor," for BPOL purposes, includes an individual or entity building for his/its own account for sale, which is what Williamsburg Plantation appears to be doing.

As related to you in my earlier memorandum of March 31, 2004, (included in your agenda materials for the April 20, 2004 meeting), York County for a number of years had been assessing a BPOL tax against Williamsburg Plantation's telemarketing offices in York County, measuring the taxable gross receipts in part by the salaries and other costs expended to run the two offices. The Commissioner of the Revenue, in consultation with the County Attorney and the Attorney General's Office, has concluded that Williamsburg Plantation, Inc. is entitled to a refund of BPOL taxes paid to York County over the prior three years in the amount of \$12,549.67, plus interest in the amount of \$2,820.15, for a total refund of \$15,369.82.

Barnett/3440:swh
Attachments

- Memorandum from Ann H. Thomas, Commissioner of the Revenue
- Request for Tax Refund by Williamsburg Plantation, Inc.
- Resolution R04-147